

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.	Applicant(s)	
10/511,199	IZUMI ET AL.	
Examiner	Art Unit	
Alix Elizabeth Echelmeyer	1795	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires ____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
 See Continuation Sheet

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. Other: _____

/PATRICK RYAN/

Supervisory Patent Examiner, Art Unit 1795

Continuation of 11. does NOT place the application in condition for allowance because: the arguments are not found to be persuasive. Applicant argues that the combination of Kilb et al. and Yanagihara et al. would not have been obvious to one having ordinary skill in the art. The examiner disagrees.

Applicant argues that the skilled artisan would not have seen the obvious substitution of the punched metal plate of Yanagihara et al. for the foam metal support of Kilb et al. The examiner holds that Kilb et al. teach that part of the foam framework is not embedded in the electrode active material, and that one having ordinary skill in the art would recognize that this area that is not embedded would be used for current transfer. So, when the skilled artisan replaces the foam support of Kilb, et al., with the punched metal of Yanagihara et al., they would recognize the need to leave some of the metal un-embedded in order to allow for current transfer.

The first full paragraph of page 9 of the Remarks discusses things that are taught in Kilb et al. that are not found in the instant invention. Applicant is reminded that claim 1 does not limit the claim from any limitations not included in the claim. The language of claim 1 is open-ended, since the claim is to an alkaline storage batter COMPRISING the limitations listed in the claim, but that is not limited to only the limitations listed in the claim.

Furthermore, the examiner upholds the motivation for combining, as is stated in the Final Rejection (see page 5). Such motivation includes improved adhesion between the plate and the active material through the tips of the burrs.

Finally, Applicant argues that only the tips of the plurality of the protrusions should be buried in the electrode material, but the examiner finds that the claim language does not require such a narrow definition. The claims require that the tip ends are buried, but not that ONLY the tip ends are buried, so most of the plate could be buried in the electrode material and still meet the final limitation of claim 1, since the tip ends would certainly be buried.